



**IRC 403(b)/ 457 Outreach Program**

**Internal Revenue Service**

**Section 457 Outreach**



# What Are 457 Plans?

- ✓ Non-qualified plans of deferred compensation
- ✓ Federal Income Tax deferred
- ✓ FICA will apply
- ✓ Timely agreement



# Types of 457 Plans

- ✓ Eligible plans – IRC 457(b)
- ✓ Ineligible plans – IRC 457(f)



# IRC 457 Eligible Employers

- ✓ State and local governments & any instrumentality
- ✓ Non-governmental entities tax exempt under IRC 501
- ✓ Tax exempt rural electric cooperatives



# ELIGIBLE PARTICIPANTS

- ✓ Governmental Employers
  - Individuals who perform services
  - Includes independent contractors
- ✓ Tax-Exempt Employers
  - Individuals who perform services
  - Limited by Title I of ERISA to highly paid or management



# IRC §457(b) - Eligible Plan Requirements



# Economic Growth and Tax Relief Reconciliation Act of 2001

## ✓ EGTRRA

- Generally effective after 12/31/2001

## ✓ Pre-EGTRRA

- Years prior to 01/01/2002



# Eligible Plan Limits

- ✓ Maximum Deferral – IRC 457(b)(2)
- ✓ Catch-up – IRC 457(b)(3)
- ✓ Plan aggregation
- ✓ Additional Catch-up age 50





# IRC 457(b)(2) Maximum Deferral Limits

## PRE-EGTRRA

- ✓ Lesser of:
  - 33 1/3% of includible compensation or
  - \$8,500
  - Limit = Total of employer & employee salary reduction deferrals

## EGTRRA

- ✓ Lesser of :
  - 100% of includible compensation or
  - \$11,000 - \$15,000  
(2002)      (2006)
  - Limit = Total of employer & employee salary reduction deferrals



# Maximum Deferral Limits -

*Continued*

- ✓ Includible compensation - IRC 457(e)(5)
  - Compensation same as 415(c)(3)
- ✓ Definition changed due to ***Jobs Creation & Workers Assistance Act of 2002***—signed March 9, 2002  
effective January 1, 2002.

(Thus, no longer excludes other elective deferrals and cafeteria plan contributions.)



# IRC 457(b)(3) Catch-Up Contributions

- ✓ Plan *may* permit catch-up
- ✓ Each of last 3 years ending before NRA “under the plan”
- ✓ Limited to
  - Prior unused Maximum Deferral Amounts
  - Only in years participant was eligible
- ✓ Single 3 year period to use this option



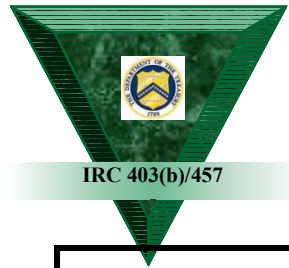
# IRC 457(b)(3) Catch-Up Contributions

## PRE-EGTRRA

- ✔ Deferral amount increased to LESSER OF:
  - \$15,000 OR
  - Sum of current year ceiling + unused portion of prior Year ceilings

## EGTRRA

- ✔ Deferral amount increased to LESSER OF:
  - Twice the dollar limit or
  - Sum of current year ceiling + unused portion of prior year ceilings



# COORDINATION WITH OTHER PLANS - IRC 457(c)

## PRE-EGTRRA

- ✓ Maximum Deferral Limit - 457(b)(2)
  - Reduced by contributions to 403(b) and SRC to 401(k), SEP or SIMPLE plan
- ✓ Catch-up 457(b)(3)
  - Same reductions

## EGTRRA\*

- ✓ Maximum Deferral Limit - 457(b)(2)
  - IRC 457(c)(2) repealed as of 01/01/2002
- ✓ Catch-up 457(b)(3)
  - Only relevant for prior year calculations (prior to 2002)
  - 457( c)(2) still relevant for prior 2002 year catch-up calculation

\*However, under new 457( c)(1) an individual is limited to 457(b) limits for deferrals under all 457 plans, even with different employers.



# Age 50 or Over Catch-up - EGTRRA - IRC 414(v)

- ✓ Eligible Governmental Plans Only
- ✓ Greater of Age 50 catch-up or IRC 457(b)(3) catch-up
- ✓ Additional \$1,000 (2002) to \$5,000 (2006)
  - Indexed in \$500 increments thereafter



# IRC 457(d)(1) Permitted Distributions

## PRE-EGTRRA

- ✔ Not earlier than:
  - Age 70 & 1/2
  - Separation from service
  - Unforeseeable emergency
  - Elective/Cash Out up to \$5,000
    - One time
    - 2 year requirement 457(e)(9)(A)

## EGTRRA

- ✔ Not earlier than:
  - Age 70 & 1/2
  - Severance from employment
  - Unforeseeable emergency
  - Elective/Cash Out up to \$5,000
    - One time
    - 2 year requirement 457(e)(9)(A)



# IRC 457(d)(2) Distributions Requirements

## PRE-EGTRRA

- Additional requirements:
  - Meets IRC 401(a)(9)
  - Additional restrictions
  - Nonincreasing benefits

## EGTRRA

- Additional requirements :
  - Meets IRC 401(a)(9)
  - Governmental employer must meet optional direct transfer under IRC 401(a)(31)





# Transfers & Rollovers

## PRE-EGTRRA

### ✔ Transfers

- 457(b) to another 457(b) [IRC 457(e)(10)]

### ✔ Rollovers

- Not permitted (Rev. Rul. 86-103)

## EGTRRA

### ✔ Transfers

- 457(b) to another 457(b) [IRC 457(e)(10)]

### ✔ Rollovers - 457(e)(16)

- Permitted for eligible governmental plans
- Same rules as qualified plans



# Purchase of Past Service Credit - IRC 457(e)(17)

- ✓ Added by EGTRRA
- ✓ Applies only to governmental
- ✓ Trustee to Trustee transfers to purchase permissive service credit (IRC 415(n)(3)(A))



# REPORTING & TAXABILITY 457(b)

## PRE-EGTRRA

- ✔ Taxed when paid or made available
- ✔ Reported on Form W-2
- ✔ Notice 2000-38

## EGTRRA

- ✔ Governmental
  - taxed when paid
  - form 1099-R
- ✔ Non-governmental
  - taxed when paid or made available
  - form W-2



# Trust Requirement for Governmental Plans

## ▼ IRC 457(g)

- Established not later than 01-01-1999
- Assets and income must be held in either:
  - Trust
  - Custodial account
  - Annuity contract
- Assets must be “held in trust for exclusive benefit of participants”



# 457 Other

- ✓ Update on proposed regulations
- ✓ Eligible plans as an alternative to FICA



# IRC §457(f) - Ineligible Plan Requirements



# Definition of Ineligible IRC Section 457(f) Plan

- ✓ Nonqualified deferred compensation plans for:
  - State/Local governmental employers
  - Tax-exempt employers



# Ineligible Plans – IRC 457(f)

- ✔ Fail to meet one or more requirements of “eligible” plan
  - Frequently intentional
  - Often unintentional
- ✔ No limit on amount of deferral - subject to a “substantial risk of forfeiture”
- ✔ Substantial risk of forfeiture = “conditioned upon future performance of substantial services”





# Ineligible Plan Taxation

- ✔ Nonexistent or inadequate risk of forfeiture
- ✔ Amounts may be taxable prior to actual payment
- ✔ Include in gross income of participant in first year that deferral amount is not subject to substantial risk of forfeiture



# Types of 457(f) Arrangements

- ✓ Typical deferred compensation
  - Coaches
  - Presidents & CEO
- ✓ Unknown arrangements
  - Departmental
  - Grants
  - Severance



# Plans Specifically Excluded from IRC 457

- ✓ Under Regs 457(e)(11)
- ✓ Grand-fathered plans of tax-exempt organizations
- ✓ Length of service award plans for bona fide volunteers
- ✓ Section 415(m) qualified government excess benefit plans



**IRC 457**  
**The END**